

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RENODDA DARRELL HICKS,

Defendant-Appellant.

UNPUBLISHED

April 25, 2006

No. 259720

Monroe Circuit Court

LC No. 04-033590-FC

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession with intent to deliver 1,000 grams or more of cocaine, MCL 333.7401(2)(a)(i). Defendant was sentenced, as a second habitual offender, MCL 769.10, to 15 to 30 years' imprisonment for the possession with intent to deliver more than 1,000 grams of cocaine conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the trial court erred in denying his motion to suppress the evidence because the cocaine, and his subsequent arrest and confession, derived from an illegal search of the vehicle he was driving. We disagree. We review the trial court's factual findings on a motion to suppress evidence for clear error. *People v Farrow*, 461 Mich 202, 208-209; 600 NW2d 634 (1999). We review de novo the trial court's conclusions of law and ultimate decision on a motion to suppress evidence. *People v Garvin*, 235 Mich App 90, 96-97; 597 NW2d 194 (1999).

As an initial matter, the use of a drug-sniffing dog on a publicly parked vehicle does not constitute a search because the dog will not disclose non-contraband items in which an individual would have a privacy interest. *Illinois v Caballes*, 543 US 405, 409-410; 125 S Ct 834; 160 L Ed 2d 842 (2005). However, if the use of a dog results from illegal conduct initiated by the police, any evidence obtained as a result of the dog's alert must be suppressed. *People v Clark*, 220 Mich App 240, 243; 559 NW2d 78 (1996).

In the instant case, police conduct leading to the dog's alert was not illegal. Border patrol agents spotted defendant driving his sport utility vehicle with Texas license plates ten miles below the speed limit in the middle lane of a major interstate. Pillows and blankets packed in the back of the vehicle made it appear as though individuals were huddled together inside, so the

agents slowed to take a better look. Defendant originally slowed with the agents, but he then sped away, cut across two lanes, and exited the interstate.

Defendant drove the wrong way through a motel drive-through lane, and one of the agents followed him and approached the vehicle on foot. The agent asked why they were in the area, and defendant and his passenger provided conflicting answers, appeared nervous, and changed the subject when the agent asked to search the car. Defendant and his passenger appeared relieved when the agent explained that he was looking for illegal aliens. The agent let defendant and his passenger park and go up to their room, but kept the vehicle under surveillance. The vehicle was parked in the motel parking lot when the agent called in a local deputy who walked the drug-sniffing dog around the outside of the vehicle. Because these actions were the product of a legally acquired suspicion, the use of the dog was not initiated through illegal police conduct. *Clark, supra*. Defendant further admits that the vehicle was parked and unoccupied. Therefore, defendant did not have a reasonable expectation of privacy in the parked vehicle, even though it was parked outside his motel room, see *People v Tate*, 134 Mich App 682, 688-689; 352 NW2d 297 (1984), and the use of the drug-sniffing dog was not a search. *Caballes, supra*.

Because the use of the dog was legal, the search of the vehicle was also legal. The automobile exception provides that police may search a vehicle without a warrant if they have probable cause to believe the vehicle contains contraband. *Pennsylvania v Labron*, 518 US 938, 940; 116 S Ct 2485; 135 L Ed 2d 1031 (1996). If a properly trained dog indicates the presence of a controlled substance, that indication is sufficient to establish probable cause. *Clark, supra*. Here, a drug-sniffing dog, certified in narcotics patrol, indicated the presence of drugs in the vehicle, so police had probable cause to search, and no warrant was required.

We also reject defendant's contention that it was improper for police to go up to his room and request the keys to the vehicle before searching it. See *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). Furthermore, defendant's temporary detention during the vehicle's search was appropriate, because police had probable cause that narcotics were hidden in the vehicle. *Michigan v Summers*, 452 US 692, 702-703; 101 S Ct 2587; 69 L Ed 2d 340 (1981). Defendant's argument that police improperly obtained his confession is also premised on the illegality of the search, so it too fails. Finally, defendant's valid confession to police indicates that he knew about the cocaine and intended to sell it, establishing his constructive possession of the cocaine. *People v Wolfe*, 440 Mich 508, 520-521; 489 NW2d 748, amended 441 Mich 1201 (1992).

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray